

HAROLD COURT EAST REGIONAL SERVICE CENTER PROJECT
HEALTH & SAFETY PURCHASING AFFIDAVIT

STATE OF TEXAS }
 }
COUNTY OF TRAVIS }

BEFORE ME, the undersigned authority, personally appeared Howard Lazarus, who being by me first duly sworn, upon oath deposed and stated: "My name is Howard Lazarus. I am the Director of the City of Austin's Public Works Department. I am over eighteen (18) years of age and I have personal knowledge of the facts set forth below and am competent and authorized to make this affidavit.

The City of Austin's Public Works Department manages the City's Capital Improvements Program, (the "Program"). The City, through the Program, is currently providing essential construction and environmental site control services for the citizens of the City of Austin. In doing so, the City is responsible for the health, safety and security of hundreds of thousands of citizens of the City.

The Harold Court East Regional Service Center is a City owned regional service center with 52 buildings that supports multi-departmental City operations and contributes significant storm-water runoff to both the Fort Branch Creek and Boggy Creek urban watersheds. The current Project is intended to address unstable slope conditions at the perimeter of the site and to preserve and protect adjacent site and utility infrastructure. In 2014, during the construction of the Harold Court East Regional Service Center Project, the Contractor and the City encountered unforeseen conditions in the form of slope failures and excessive ground water.

An engineering investigation and analysis of the ground water and unstable slopes have led to the conclusion that the unforeseen site conditions present the possibility of further slope failures and resulting site degradation and erosion. These unforeseen conditions have resulted in present damage to City property, which may endanger the integrity of the public improvements constructed to date. In addition, the open site conditions at the Project constitute a present danger to the adjacent watersheds and environmental public health and safety.

The requested Council action will provide funding for Change Order No. 8 for the construction of additional quantities of work, including additional excavation, borrow material, and removal of waste in the amount of up to \$610,625 with a funding contingency in the amount of up to \$539,375 for additional change orders as necessary to resolve and mitigate health and safety conditions and unforeseen damage to City property in accordance with Sections 252.022(a)(2) and (3) of the Texas Local Government Code for a total contract amount not to exceed \$6,81,415. The subsequent change orders will be negotiated when additional information on site conditions is available. While it is possible that the additional change order(s) may be accomplished within the standard statutory twenty five percent (25%) change order authority ceiling, the actual costs of the work will not be known until actual site conditions are uncovered, investigated and addressed. Therefore, it is possible that the additional change orders may result in the 25% change order ceiling being exceeded. On the basis of a legal analysis, it appears that

this would be permitted in the current situation because of the application of the health and safety exception and the unforeseen damage to public property exception to bidding contained in 252.022 of the Texas Local Government Code that are supported by the foregoing facts in this case.

Public Works Engineering Services Division continues to evaluate solutions for the most cost-effective means for the successful completion of the Project. Because the corrective design effort is ongoing, the estimate to complete construction has not been finalized. The present request for funding is based on best estimates of the additional work, but may not accurately reflect the actual quantities of the remaining work needed to complete the Project. Accordingly, additional funding may be requested in a future RCA upon completion of the corrective design based upon the exceptions to bidding discussed above.

The City will proceed with a set of change orders to expeditiously perform the necessary construction to abate the conditions at the Project in order to address the unforeseen damage to public property and to preserve or protect the public health and safety of the City's residents. Until the Project is completed, the City will be faced with correcting the unforeseen damage to public property and the continuing probability of health and safety related concerns. The situation described above requires immediate action to complete the scope of work on the Project on a reasonable schedule to correct the damage to public property and to relieve the health and safety necessity of the municipality. The Department of Public Works is satisfied that the quality of the completed work will correct the damage to City property and adequately provide for the health and safety of the public. It is presently contemplated that the Project cannot be completed for an amount under the City Manager's purchasing authority pursuant to Article VII, Section 15 of the City Charter, and, accordingly, the change order for the Project will be presented to City Council for funding authority.

As the affiant, I am familiar with state and local laws relating to competition and bidding requirements and realize that the willful violations of these laws can invoke criminal sanctions. I understand further that the Charter of the City of Austin does not exempt emergency or health and safety purchases from the requirement of competition. However, I believe that the time required to package bid documents, advertise for contractors, award a contract, and execute a contract, would place the municipality's residents or property in further danger and that my fiduciary responsibilities to the City of Austin required that the purchase of (item/service) be made as soon as reasonably possible, if not immediately. This procurement is necessary to protect or preserve the public health or safety of the municipality and to address unforeseen damage to City property in accordance with the provisions of Texas Local Government Code Section 252.022(a)(2)(3). "Further Affiant sayeth not."



Howard Lazarus, P.E., Director
City of Austin Public Works Department

STATE OF TEXAS }
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BEFORE ME, the undersigned notary public, personally appeared Howard Lazarus, known to me personally or on the basis to legally sufficient identification to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, in the capacity therein stated, and that each and every statement therein is within his knowledge and is true and correct.

Given under my hand and seal of office on the 11th day of August, 2014.



Delia Lara-Uballe
NOTARY PUBLIC, STATE OF TEXAS

Delia Lara-Uballe
Printed Name of Notary

My Commission Expires: May 7, 2017